

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

IN RE:

APPLICATION OF INTERNATIONAL MINERAL  
RESOURCES B.V. FOR AN ORDER TO TAKE  
DISCOVERY PURSUANT TO 28 U.S.C. § 1782

Applicant.

Case No. 1:15-mc-00241

**DECLARATION OF REBECCA G. MANGOLD**

**EXHIBIT E**



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Your ref Ms R Mangold  
Our ref Mr G Pritchard/135918  
/4150603

1 October 2015

**SHAFT SINKERS (PTY) LTD (IN LIQUIDATION) // VARIOUS EX-EMPLOYEES OF SHAFT SINKERS (PTY) LTD**

Dear Mr Cogan

1. We refer to your letter of 27 September 2015, in which you requested a short letter setting out the legal position relating to our letters to six ex-employees of Shaft Sinkers (Pty) Ltd ("ShS") and comments to paragraph 11 of a legal opinion dated 15 September 2015 filed by Salisbury & Ryan LLP in the United States District Court.
2. Arbitration proceedings between EuroChem-Volgakaliy ("EuroChem") (on the one hand) and Shaft Sinkers (Pty) Ltd and Rossal No 126 (Pty) Ltd ("Rossal") (on the other hand) took place in Zurich, Switzerland, commencing in 2012 and continuing through 2015. Furthermore, arbitration proceedings between the same parties are pending in Paris, France.
3. In the course of the Swiss proceedings, ShS discovered that a number of its ex-employees had disclosed certain confidential information of ShS and provided witness statements to EuroChem in violation of the various employees' employment contracts and in breach of their fiduciary duties towards ShS.
4. It was in this connection that letters were written to each of these employees for purposes of enforcing their contractual obligations to ShS.
5. We note that the allegations of witness intimidation at paragraph 11 of a legal opinion dated 15 September 2015 filed by Salisbury & Ryan LLP in the United States District Court are incorrect in several respects. Firstly, we are appointed as counsel for the business rescue practitioners of ShS and Rossal. We do not represent IMR. Secondly, it is clear from the letters sent to the former employees of ShS that there has been no attempt to intimidate the employees from testifying in proceedings where they may be called upon to give evidence.

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Hogan Lovells (South Africa) partners: L Modise (Chairman), J Andropoulos, W Badenhorst, W Beech, B Biebuyck, A Boshoff, J Buckland, A Canny, P Chenery, W Drue, A Elliott, M Els, D Francis, M Govender, J Jacobs, I Jacobsberg, D Kouvelakis, D Magidson, I Mahomed, N Napier, E Nel, J Peart, K Pietersen, G Pillay, L Pillay, R Pillay, G Pritchard, C Rumsey, H Schensema, C Serobe, A Shapiro, E Souris, S Thema, P van Rensburg, V Vurgarellis, N Webb Consultants: D Adams, R Botha, C Marais, D Rabin Senior Associates: L Acker, S Baker, S Chauke, J Ewang, K Kramer, K Krusch, M Leibowitz, W Makadam, M Mochitele, A Nondwana, C Pavlovic, J Reddi, N Vellman, B Wray Associates: M Adam, Z Akram, D Donaldson, L du Plessis, A Graham, J Higgs, M Khan, P Letsaba, P Lourens, G Mathebula, G Miskin, C Murdock, S Nandkissor, M Ngcobo, M Nicholas, J Nielsen, K Nkaiseng, P Nkuna, T Paterson, M A Phooko, P Sannasi-Pillay, G Sader, H Sathekge, D Sebola, E van Zyl, C You Head of Tax and Head of China Practice Group: E Lai King Chief Executive Officer: M Thomson Chief Financial Officer: P Labuschagne \*not attorney/not partner

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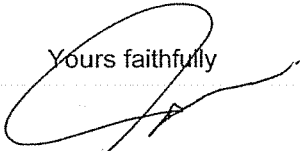
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6. A proper legal basis exists for sending the letters to the ex-employees and ShS is permitted by law to pursue the legal remedies available to it to enforce the ex-employees' contractual obligations and fiduciary duties towards ShS and Rossal. A letter of demand to the ex-employees requesting compliance with their contractual obligations can therefore not amount to witness intimidation.
7. What has been demanded was a representation by the ex-employees that no confidential information would be divulged in breach of their employment contracts and in breach of their fiduciary duties to their former employer, namely ShS.
8. As an example of these letters, we annex the letter that we sent to a former employee named Christopher Hall on 4 August 2015. We have sent similar letters to other former employees.
9. Since sending the letter to Mr Hall, we have filed an application in the High Court of South Africa against Mr Hall to enforce his contractual and fiduciary obligations to ShS.

Yours faithfully



Gary Pritchard  
Partner



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Mr Christopher Hall

Your ref Mr Christopher Hall  
Our ref I35918 / Gary Pritchard/Kylene Weyers  
/4127476

4 August 2015

Dear Sirs,

**Shaft Sinkers Holdings PLC (in liquidation) and Shaft Sinkers (Pty) Ltd (in business rescue) / Mr Christopher Hall**

1. We act on behalf of Shaft Sinkers Holdings PLC (in liquidation) ("SSH") and on behalf of Shaft Sinkers (Pty) Limited (in business rescue) ("ShS"), the latter being a Group Company referred to below ("our clients").
2. We are instructed that on or about 20 December 2010, you concluded a service agreement ("the agreement") with SSH in terms of which you were employed as the Finance Director. We are furthermore instructed that your employment was terminated on 11 January 2015.
3. In terms of the agreement, a "Group Company" means "any company which is a holding company of the Company or a subsidiary undertaking of the Company or of any holding company (as such expressions are defined in sections 548, 1159 and 1162 Companies Act 2006) and "Group" shall be defined accordingly".
4. Furthermore, the following relevant clauses are contained in the agreement:

12.1 *In addition to and without prejudice to the Executive's common law obligations to keep information secret, the Executive will not (except for the purpose of performing his duties or unless ordered to do so by a court of competent jurisdiction) either during his employment or after its termination directly or indirectly use, disclose or communicate Confidential Information and he will use his best endeavours to prevent the improper use, disclosure or communication of Confidential Information:*

(A) *concerning the business of the Company or any Group Company and which comes to the Executive's attention during the course of or in*

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Head of Tax and Head of China Practice Group: E Lai King\* Chief Executive Officer: M Thomson\* Chief Financial Officer: P Labuschagne\* \*not attorney/not partner

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Mr Christopher Hall

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*connection with his employment with the Company or any Group Company from any source within the Company or any Group Company; or*

...

12.2 For the purposes of clause 12.1, Confidential Information means:

- (A) *any information of a confidential nature (whether trade secrets, other private or secret information including secrets and information relating to corporate strategy, business development plans, product designs, intellectual property, terms of business with customers and potential customers and/or suppliers, annual budgets, management accounts and other financial information) whether or not it is specifically designated as confidential or secret; and/or*
- (B) *any confidential report or research undertaken by or for the Company or any Group Company before or during the course of the Executive's employment; and/or*
- (C) *the prior financial results of any individual part of the business of the Company or any Group Company which are not publicly available and which could damage the Company and/or benefit competitors or prospective competitors; and/or*
- (D) *details of the requirements, financial standing, terms of business and dealings with any Company or Group Company of any client of the Company or any Group Company; and/or*

...

12.4 *The obligations of the Executive under this clause 12 shall continue to apply after the termination of the Executive's employment irrespective of the reason for termination.*

...

23. *This Agreement shall be governed by and construed in accordance with South African law and the parties agree to submit to the exclusive jurisdiction of the South African Courts as regards any claim, dispute or matter arising out of or relating to this Agreement.*

5. Furthermore, the relevant clause in Schedule 1 reads as follows:

1.6 *The Executive shall not at any time (whether during or after the termination of his employment) make whether directly or indirectly any untrue, misleading or derogatory oral or written statement concerning the business, affairs, officers or employees of the Company or any Group Company.*

6. We are furthermore instructed that there are two sets of arbitration proceedings currently pending between Eurochem-Volgakaliy LLC ("Eurochem") on the one hand and SHS and Rossal No 126 (Pty) Ltd ("Rossal") on the other hand. An evidentiary hearing for one of those proceedings took place in Zurich, Switzerland in 2014 and the outcome of those arbitration proceedings is awaited.

7. You testified at the aforesaid arbitration on behalf of ShS and Rossal. We understand that you then furnished Eurochem with at least two written statements dated 22 and 30 June 2015 containing certain confidential information, which constitutes a breach of the

Mr Christopher Hall

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confidentiality clauses in the agreement and which is also in breach of to your fiduciary duties as the erstwhile Finance Director of SSH.

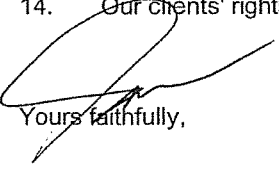
8. Also, we were instructed that you have delivered to Eurochem, a lot more confidential information belonging to our clients, and you have deposed to an affidavit in an application for the liquidation of ShS in the High Court of South Africa which also contains confidential information of our client.
9. The use of the confidential information which has been furnished by you as referred to above, has already caused and will further cause damage to, amongst others, our clients.
10. Our clients have reason to suspect that there will be further breaches by you of the confidentiality clause contained in the agreement as well as of your fiduciary duty towards our client, notwithstanding the fact that your employment has terminated.
11. The import of this letter is accordingly to demand that you within 5 (five) days from date hereof:
  - (i) Retract all statements made by you in any forum where reference is made to our clients and in which confidential information has been referred to without our clients' permission;
  - (ii) Provide us with a detailed written report on which information and documents you have provided to Eurochem or its affiliates or their lawyers; and
  - (iii) Return to our offices, all of the confidential information which you unlawfully handed over to Eurochem or its affiliates or their lawyers in breach of the agreement and your fiduciary duty towards our clients; and
  - (iv) Ensure that Eurochem or its affiliates or their lawyers has not retained any copies in any format whatsoever of the confidential information referred to above and provide written confirmation to this effect to our offices; and
  - (v) Provide us with information whether Eurochem or its affiliates or their lawyers paid you to provide the witness statements and confidential information and documents; and
  - (vi) Furnish us with a written undertaking that you will refrain from making any further statements and/or divulging any further confidential information to any parties wheresoever in breach of the agreement and your fiduciary duty towards our client.
12. In the event that we have not received confirmation of your total compliance with the demands referred to above within 5 (five) days from date hereof, we hold instructions to without further communication proceed to approach the High Court of South Africa to, *inter alia*, interdict you from continuing to breach the agreement and your fiduciary duty by disseminating confidential information belonging to our clients, as well as for the return of all confidential information contained in documentation or any other format which you unlawfully handed to Eurochem or any other party not entitled to such confidential information. In such application we shall seek a punitive costs order against you.
13. Once our clients have computed the damages which they have suffered as the result of your unlawful actions, action will be instituted for recovery of such damages, together with an appropriate order as to costs.

Mr Christopher Hall

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14. Our clients' rights remain strictly reserved.



Yours faithfully,

Gary Pritchard  
Partner  
Hogan Lovells (South Africa)